

# Directive

460.5

7/11/89\*

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## **ADMINISTRATIVE GRIEVANCE SYSTEM**

\*organizational abbreviations and addresses  
have been updated

### 1. PURPOSE

The purpose of the Administrative Grievance System is to establish a procedure for the timely and fair consideration of employee grievances and reconsideration of performance appraisal ratings for Performance Management and Recognition System (PMRS) employees.

### 2. REPLACEMENT HIGHLIGHTS

This Directive replaces APHIS Directive 460.5, dated 8/11/81.

### 3. REFERENCES

These procedures incorporate provisions of Title 5, Code of Federal Regulations (CFR), 771.201, et.seq., and Title 5, CFR 430.407(e) as well as the Federal Personnel Manual and the Department Personnel Manual, Chapters 771 and 430.

### 4. POLICY

APHIS recognizes the importance of the employee to the organization and the desirability of prompt consideration and resolution of problems arising in the course of employment. Recognizing that disagreements between employees and management will occur from time to time and that such issues should be resolved promptly and equitably to the benefit of all concerned, it is APHIS policy that disputes over matters covered by this Administrative Grievance System will be resolved at the lowest level and in as timely a manner as possible with due regard to applicable regulations.

It is APHIS policy that no action will be taken against an employee for filing or considering the filing of a grievance. Reprisal, intimidation, coercion, restraint, or discrimination because of grievance activity or contemplated grievance activity is a prohibited personnel practice which may constitute a basis for disciplinary action. In like manner, employees who provide information concerning matters at issue in a grievance or who act as representatives are to be free from reprisal, intimidation, coercion, restraint, or discrimination.

## 5. DEFINITION

- a. Bargaining Unit Employee - An employee included in an exclusive bargaining unit as determined by the Federal Labor Relations Authority for which a labor organization has been granted exclusive recognition.
- b. Days - Days for the purpose of this Directive mean calendar days.
- c. Discrimination - Discrimination because of race, color, religion, sex, national origin, physical or mental handicap, or age when the complainant is 40 years of age or over.
- d. Employee - In addition to any current employee, this includes any former employee of the Agency for whom a remedy can properly be provided.
- e. Factfinder (also Grievance Examiner) - A person appointed by the Chief, Employee Appeals Staff (EAS), Office of Personnel (OP), USDA, to conduct appropriate inquiry into a grievance and to render a recommended decision on the issue(s) at hand.
- f. Grievance - A request by an employee, or a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction which is subject to the control of management.
- g. Grievance File - A tabbed and indexed file established expressly for the purpose of creating and preserving a record of all documents and evidence pertinent to a grievance. This includes, but is not limited to, letters and memoranda generated by the person filing the grievance and by the involved supervisors, statements of witnesses, and official records and documents upon which the dispositions of the grievance are based. The grievance file may not contain any document or item not made available to the grievant for review prior to a final decision on the grievance.
- h. Personal Relief - A specific remedy directly benefiting the grievant(s) which may not include a request for disciplinary or other action affecting another employee.
- i. PMRS - Employees in positions meeting the definition of “supervisor” or “management official” as defined in 5 United States Codes (U.S.C.) 7103(a)(10) and (11), and classified at grade levels GM-13, GM-14, and GM-15.

## 6. SYSTEM COVERAGE

### a. Employee Coverage

- (1) **Employees Covered** - These procedures apply to all nonbargaining unit employees, regardless of type of appointment, and to all bargaining unit employees not covered by a negotiated grievance procedure.
- (2) **Employees Excluded:**
  - (a) Employees listed in Title 5, CFR Part 771.206(b) (Noncitizens, aliens, and employees appointed and paid under special and relatively rare authorities not common to the Department of Agriculture).
  - (b) All applicants for employment.
  - (c) All bargaining unit employees covered by a contract except as related to matters specifically excluded from coverage by the negotiated grievance procedure. The parties to the agreement must specifically and affirmatively exclude any matters they do not wish to have covered by the negotiated procedure.
  - (d) Employees covered by the Foreign Service Grievance System.

### b. Subject Matter Coverage:

(1) **Matters Covered** - Except as listed in (2) below, these procedures are used to review any matter of concern or dissatisfaction relating to the employment of an employee which is subject to the control of management including, but not necessarily limited to:

- (a) Working conditions.
- (b) Improper application of or failure to follow rules and regulations.
- (c) Suspensions from duty without pay for 14 days or less, letters of reprimand, and letters of caution/warning, including leave restriction notices.
- (d) Unfair treatment, including coercion, restraint, or reprisal.
- (e) Performance appraisal ratings (excluding Senior Executive Service (SES) employees).
- (f) Nonselection for training.
- (g) Changes in assignment, including details and reassignments.
- (h) Coverage or exclusion from PMRS.
- (i) Prohibited personnel practices except discrimination (discrimination complaints will be processed under the EEO Complaint System).

(2) Matters Excluded:

- (a) The content of published Agency regulations and policy.
- (b) Matters appealable to or reviewable by the Merit Systems Protection Board, Office of Personnel Management, Equal Employment Opportunity Commission, or the Comptroller General.
- (c) A preliminary warning or notice of an action which, if effected, would be either covered under the grievance system or excluded from coverage. (This includes matters such as acts or failures to act, performance progress reviews, documentation of performance, the methods used during the appraisal period including the methods used to conduct and document a performance progress review, as well as documentation of progress in any tentative, preliminary, or interim appraisal. While not grievable in and of themselves, such items would be considered if made a part of a grievance concerning a final performance appraisal rating or an adverse action based upon unacceptable performance).
- (d) Nonselection for promotion from a group of properly ranked and certified candidates.
- (e) Failure to receive a noncompetitive promotion.
- (f) Separation during a probationary period.
- (g) Separation of a temporary employee.
- (h) The substance of the critical elements and performance standards of an employee's position.
- (i) Decision to withhold a within-grade increase.
- (j) The granting of, failure to grant, or the amount of performance award, quality step increase, or other kind of honorary or discretionary award.
- (k) The adoption of, or failure to adopt, an employee suggestion or invention.

- (l) A decision to grant or not grant a general increase, merit increase or performance award under PMRS, or a decision to grant or not grant cash awards or honorary recognition to PMRS employees.
- (m) Position classification or job-grading decisions.
- (n) Health benefits claim decisions.
- (o) Separation of employees serving under Schedule A, Schedule B, or Schedule C appointments.
- (p) The return of a probationary supervisor or manager to a nonsupervisory/nonmanagerial position.
- (q) An action which terminates a temporary or term promotion and which returns the employee to the position from which the employee was temporarily promoted or to a different position (not lower in grade) where the employee is informed in advance that the promotion is only temporary.
- (r) Reassignment of an SES employee following receipt of an unsatisfactory performance.
- (s) Return of an SES employee to the General Schedule or other pay system during the 1-year probationary period or for less than fully successful performance.
- (t) The termination of an SES career appointee during probation for unsatisfactory performance.
- (u) A performance evaluation of an SES employee.
- (v) An action taken in accordance with the terms of a formal agreement, voluntarily entered into by an employee, which assigns the employee from one location to another or which returns an employee from an overseas assignment.
- (w) A salary offset determination which is reviewable under separate procedures established pursuant to the Debt Collection Act of 1982, Public Law 97-365 (5 U.S.C. 5514, Title 5, CFR 550 and Title 7, CFR Part 3).

## 7. GENERAL PROVISIONS

- a. Representation - A grievant is entitled to be accompanied, represented, and advised at any stage of his/her grievance by a representative of his/her choice. Exceptions: A representative may be disallowed if the Agency determines the representative would:

- (1) Present a conflict of interest or position;
- (2) Be required to perform other priority work for the Agency; or
- (3) Give rise to unreasonable costs to the Agency.

Any disallowance of a representative must be communicated to the grievant in writing and may be reviewed at the grievant's written request (within 7 days of the disallowance) by the Chief, Grievance and Appeals Staff, USDA. Written disallowance of a designated representative shall contain notification of the right to have the matter reviewed, the 7-day time limit, and the address to which the request should be sent. OP's decision is final.

If the grievant wishes the representative to receive material from the Agency and to act on his/her behalf, a written designation to that effect must be given to the Agency official considering the grievance.

An employee may change representatives, but this change must be made in writing to the Agency official considering the grievance at the time the change is made.



**Note:** Employees have the right to pursue a grievance with or without representation.

- b. Official Time - The grievant and his/her representative (if an agency employee) shall be granted a reasonable amount of official time if otherwise in an active duty status to present the grievance. Grievants and/or their representatives (if employees) must request and obtain approval for official time from their respective supervisors in advance of the official time used. Supervisors shall grant an amount of official time determined to be reasonable according to the facts and circumstances of each case. If presentation of a grievance requires more time than approved by the supervisor, the grievant or his/her representative may submit a written request for additional time with an explanation of why more time is needed. The appropriate supervisor will provide a written response and decision on the request for additional time.



**Note:** Official time to prepare a grievance will not be included. Official time to present a grievance may include a reasonable amount of time to travel to the site of presentation if such travel occurs during the time the grievant and/or representative would otherwise be in active duty status.

- c. Freedom From Reprisal - Grievants and their representatives shall be free from restraint, coercion, intimidation, or reprisal in presenting a grievance. Allegations of such actions, at the option of the grievant, may be added to a pending grievance and presented to the appropriate management official or may be presented in writing to the Chief, Grievance and Appeals Staff, USDA.
- d. Expenses - There are no provisions for the payment of attorney fees or any other expenses associated with the filing of a grievance to the grievant and representative under the Administrative Grievance System.
- e. EEO Complaints - Complaints of discrimination are excluded from grievance coverage. Accordingly, a grievance concerning a matter(s) about which the employee has filed a formal complaint of discrimination must be rejected, either wholly or partially as appropriate. When an employee submits a grievance on more than one matter, but files a formal discrimination complaint on less than all matters of the grievance, only those matters for which discrimination has been alleged must be rejected. When an employee files a formal discrimination complaint about a matter(s) for which a grievance has been submitted, the employee must so inform the appropriate Grievance Official; failure to do so shall result in cancellation of the grievance in its entirety for failure to provide required information. However, a grievance may **not** be rejected or canceled because the employee seeks precomplaint counseling under the EEO complaint process, and the employee is not obliged to inform the Grievance Official that precomplaint counseling has been sought.
- f. Time Limits - It is Agency policy that employee grievances will receive prompt consideration as the expeditious and orderly resolution of problems is of benefit both to management and to the employee. Variables in the complexities of the issues present in a particular case may

necessitate departure from the established time limits. Such departure, will, however, be the exception rather than the rule. When they occur, the responsible management official must advise the grievant of the reason for the delay and of the date the grievant may expect action on the grievance. If action does not take place as indicated, the grievant may, without jeopardy to the grievance, elevate the case to the next level in the process.

The following timeframes have been established to ensure prompt consideration of grievance:

1. **Initiation of Grievance** - A grievant shall present a grievance within 15 days of the date of the act or occurrence that is the basis of the grievance or within 15 days of the date the grievant became aware (or reasonably could have been expected to become aware) of such act or occurrence.



If the grievance concerns a particular management action with a specific effective date (e.g., suspension or performance rating, the grievant may not be presented prior to the effective date of the action).

2. **Consideration of Grievance** - The consideration and processing of the grievance will be completed within 90 days from the date of initial presentation of the grievance. If processing of the grievance has not been completed within the 90 days, the grievant must be notified, in writing, that the grievance may be elevated the Department level by submitting a written request to the Chief, Grievance and Appeals Staff, USDA, requesting that the grievance be assigned to a Factfinder.
- g. **Resolution** - Employees and supervisors shall follow the procedures outlined in Attachment 1 and 2 for the initiation, consideration, and resolution of grievances and reconsideration of PMRS performance ratings. However, in keeping with the policy of resolving problems at the lowest level possible, nothing in this Administrative Grievance System prohibits reasonable and good faith efforts by managers to resolve a grievance being processed, regardless of the stage of the review. Such efforts for problem resolution are encouraged.
- h. **Rejection of Grievance** - A grievance will be rejected, either wholly or partially, as appropriate, at the formal stage by a Grievance Official when the grievance:

(1) Does not specifically state that it is a grievance presentation.

(2) Does not furnish sufficient detail to identify clearly the matter being grieved.

(3) Does not specify the personal relief sought.

(4) Consists of a matter(s) that is either not covered by the Administrative Grievance Procedure or is not subject to the control of management.

(5) Is made by an employee or nonemployee who is not covered by the Administrative Grievance Procedure.

(6) Is not timely.

(7) Does not meet a processing requirement; e.g., the grievant did not first raise the matter as

an informal grievance.

The rejection decision will cite the relevant section(s) of this Directive and will provide an explanation of why the cited section(s) is applicable to the rejection.

The rejection decision will also advise the grievant of the right to appeal to, and request a reconsideration of the rejection by, the Chief, Grievance and Appeals Staff, USDA. Such request must be in writing and must be made within 7 days of receipt of the rejection decision.



A grievance will be rejected as above **only** in the formal stage. No informal grievance may be rejected for any reason. An informal grievance must be accepted and addressed even though it may, in the end, be rejected as a formal grievance.

i. Cancellation of Grievance - A grievance will be canceled:

(1) At the employee's request.

(2) Upon termination of the employee's employment with the Agency, unless the personal relief sought by the employee can be granted after termination of employment with the Agency.

(3) Upon the death of the employee, unless the grievance involves a question of pay.

(4) For failure of the employee to furnish required information.

(5) For failure of the employee to duly proceed with advancement of the grievance.

(6) When the personal relief sought by the grievant has been granted.

A cancellation decision by the Grievance Official will cite the relevant section (s) of this Directive and will provide an explanation of why the cited section(s) is applicable to the cancellation. The cancellation decision also will state the right to request review of the decision to cancel by the Chief, Grievance and Appeals Staff, USDA. Such request must be in writing and must be made within 7 days of receipt of the rejection decision.

j. Maintenance of Grievance File - A grievance file as defined in Section 5.g. above must be established at the time the initial grievance decision is issued (informal stage) and maintained thereafter through all subsequent procedural steps. As the processing of the grievance continues, copies of all relevant material must be added to the file.

## 8. PROCEDURES

Procedures for the consideration of administrative grievances and for the reconsideration of PMRS performance ratings are in Attachment 1 and 2, respectively.

/s/ James W. Glosser  
APHIS Administrator

[Attachment 1](#) - Administrative Grievance Procedures

[Attachment 2](#) - Reconsideration of PMRS Ratings

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**Attachment 1**  
**APHIS Directive 460.5**  
**7/11/89**

### ADMINISTRATIVE GRIEVANCE PROCEDURES

The following is the procedural sequence of progression, requirements for consideration, and responsibilities for resolution of employee grievances under this system.

#### 1. INFORMAL PROCEDURES

##### a. Informal Grievance:

- (1) Except as provided in 1.a.(2), below, an employee desiring consideration of a grievance must first present the matter as an informal grievance and allow the Agency, at the lowest level possible, an opportunity to resolve the problem. Failure to do so will be grounds for rejection of the grievance in the formal procedure.
- (2) The informal grievance procedure will be waived and the matter at issue may be presented initially as a formal grievance under 2. below in the following circumstances:
  - (a) When the Administrator of the Agency has been substantively involved in the matter with which the grievance is concerned; or
  - (b) When the matter being grieved is a disciplinary action which was made effective after an advance written notice (to include a right to reply and contest the proposed action) and a final written decision. (The right to reply is considered equivalent to an opportunity for informal resolution.)

- b. Content - The grievance **must be in writing** and specifically identified as a grievance under these procedures. The written grievance must also set forth the specific concerns which are the basis for the grievance in sufficient detail to identify and explain the matter being grieved. The personal relief sought in remedy of the grievance must be specified. Finally, the grievance should be accompanied by all available and relevant evidence, documentation, and argument which the grievant believes will support the grievance and justify the personal relief requested.



- c. Time Limit for Presentation - The informal grievance must be presented by the employee or the grievant's representative within 15 days of the act or occurrence that is the basis of the grievance or within 15 days of the date the grievant became (or reasonably could have been expected to become) aware of such act or occurrence.
- d. Presentation - An informal grievance must be presented to the lowest level management official within the Agency who has the authority over, and can make a decision on, the matter being grieved. This is usually the official who made the decision, committed the act or failure to act, or caused the occurrence forming the basis of the grievance and would normally be the grievant's immediate supervisor. However:
- (1) When the grievance concerns relationships with, or actions taken by, the immediate supervisor, the employee may present the informal grievance to the next higher (second) level of supervision.
  - (2) The appointing officer is the management official to receive an informal grievance about or involving Merit Promotion Procedures. (An appointing officer has authority to approve an SF-50, Notification of Personnel Action, and is not to be confused with a selecting official under the promotion program.) The appointing officer may also be the official to receive a grievance concerning a decision made in the personnel office, e.g., a qualifications determination, rejection of an application for a position vacancy, or a salary-setting determination.
  - (3) For performance appraisal grievances, the reviewing official (rather than the rating official) is the one to receive the informal grievance.
  - (4) If the grievant is not sure of the official to whom the initial presentation should be made, the informal grievance shall be presented to the grievant's immediate supervisor who will determine whether he/she has the authority to decide on the matter. If the official who receives an informal grievance determines that he/she lacks authority, the official will forward the grievance to the proper official in the Agency and so inform the grievant in writing.
- e. Management Official - The management official to whom an informal grievance is properly presented for his/her decision shall furnish a copy of the grievance to the Employee Relations Specialist servicing that organizational unit. Such copy shall be furnished within 3 days of the official's receipt of the grievance.
- f. Decision - A grievance may not be rejected for any reason during the informal procedure, but must be accepted and addressed by the management official. A determination will be made as to whether it is possible to resolve the informal grievance through corrective action, clarification, or other adjustments. If a resolution cannot be achieved, the official who is considering the grievance will issue to the grievant a written decision which:
- (1) Outlines the issues in the grievance and attempts made to resolve them;
  - (2) States the decision on the grievance and the reason(s) therefore;
  - (3) Informs the grievant that the informal grievance process is terminated;
  - (4) Advises the grievant that further consideration of the matter may be requested under the formal procedure; the name, title, and address to whom the formal grievance should be presented (normally the individual in the chain of command who is the next higher level supervisor or management official above the informal grievance deciding official); and the time limit (10 days) for such further presentation; and

- (5) Advises the grievant that if the Agency has not completed consideration and processing of the grievance within 90 days of its initial presentation, the grievant may elevate the grievance to the Chief, Grievance and Appeals Staff, USDA.

This written decision on the informal grievance must be issued to the grievant by the deciding official within 15 days after receipt of the written grievance. (If a written decision on the informal grievance is not issued within the 15 day time limit and the employee has not been advised of the reason for the delay, the employee may, at his/her option, either await the issuance of a decision or proceed to the formal procedure. )

## 2. FORMAL PROCEDURE

### a. Formal Grievance:

- (1) When an employee receives a decision under the informal procedure which does not satisfy the grievant, or when the time limit for management action under the informal procedure has expired without a decision, the employee may within 10 days thereafter submit the grievance for further consideration under the formal procedure.
- (2) As previously indicated in 1.a.(2) of this Attachment, a matter may be presented initially as a formal grievance when it concerns an issue in which the Agency Administrator has been substantively involved or when it concerns a disciplinary action involving an advance written notice, right to reply, and a final written decision. The employee under these circumstances may initially present a formal grievance within 15 days of the act or occurrence, within 15 days of the date of becoming (or reasonably could have been expected to become) aware of such act or occurrence, or within 15 days subsequent to the specified effective date of the personnel action.

### b. Content - The grievance must be in writing, signed and dated by the grievant or representative, and specifically identified as a formal grievance. It must also include:

- (1) Name, position title, grade, and organizational unit;
- (2) A specific statement of the issue(s) in sufficient detail to identify clearly the matter being grieved and explain the basis for the grievance. The employee may provide an explanation to clarify the initial grievance, if appropriate, but the formal grievance is limited to grievance matters that were previously reviewed but not resolved to the employee's satisfaction during the informal grievance process (except that allegations of reprisal may be addressed);
- (3) The personal relief the employee is seeking;
- (4) Steps taken under the informal grievance and the result of such steps; and
- (5) A copy of the informal grievance and responses or decisions from the management official who considered the informal grievance, including all available evidence, documentation, and argument to support the grievance, and justify the personal relief requested as well as clearly stating the reason(s) for disagreeing with the initial decision.

### c. Presentation - The formal grievance shall be filed with the designated management official set forth in the informal grievance decision (normally the next higher level management official or supervisor above the informal grievance deciding official). The formal grievance shall be filed through the servicing Employee Relations Specialist for that organizational level for referral to the deciding official.

- d. Acceptance - Promptly upon receipt of the grievance, the Employee Relations Specialist will review it for procedural acceptability, and within 7 days, shall either accept the grievance for processing or reject the grievance because it:

- (1) Is not identified as a grievance;
- (2) Does not furnish sufficient detail to clearly identify the matter being grieved;
- (3) Does not specify the personal relief sought;
- (4) Concerns matters excluded from the coverage of the grievance system;
- (5) Is made by an employee or other individual not covered by the grievance system;
- (6) Is not timely filed; or
- (7) Does not meet a processing requirement, e.g., matter not first raised as an informal grievance.

The Employee Relations Specialist, upon finding that the grievance should be rejected for any or all of the above reason(s), will advise the grievant in writing of the rejection, the reason(s) for the rejection, and the right of the grievant to appeal such rejection to the Chief, USDA Grievance and Appeals Staff, USDA, within 7 days of receipt of the rejection. Any grievant's appeal of rejection should be submitted to the Chief, USDA Grievance and Appeals Staff, through the Chief, Employment and Management Relations, Marketing and Regulatory Programs, Human Resources.

The Employee Relations Specialist, upon finding the grievance procedurally acceptable, shall obtain and/or establish the grievance file and refer the matter to the designated deciding official for consideration.

- e. Decision - The designated deciding official will issue a written decision to the grievant within 20 days of receipt of all pertinent materials. The written decision will present findings and reasons for the determination made on the grievance and will notify the grievant of:

- (1) The right to final decision by the Administrator, with or without review by a Departmental Factfinder, if the matter has not been resolved to the grievant's satisfaction;
- (2) The time limit of 10 days within which to request a final decision;
- (3) The fact that no new issues may be raised as a part of the grievance except those concerning allegations of restraint, coercion, intimidation, or reprisal;
- (4) The need to indicate in the request which items remain unresolved, the corrective action being sought, including any additional, relevant arguments and evidence in the request which the grievant wishes to have considered; and
- (5) The Agency's intention to close the grievance with no further action if the grievant does not submit a request for further review within the allotted time limit.

A copy of the grievance file, including all information and documentation contained therein, will be provided to the grievant with the grievance decision.

- f. Request for Review by Factfinder - The employee may request review by a Department Factfinder within 10 days of receipt of the formal grievance decision. The request must be submitted in writing and shall state:

- (1) The issue(s) which is unresolved; and

- (2) The basis for continued request for the relief including any additional evidence not previously available.

This request must be submitted to:                      Chief, Employee and Management Relations  
MRP, Human Resources  
4700 River Road, Unit 18  
Riverdale, MD 20737

Upon receipt of the employee's request, two copies of the grievance file will be forwarded with two copies of the grievance letter to the Chief, USDA Grievance and Appeals Staff, USDA, for assignment to a Factfinder.

The referral will address the merits of any additional arguments and/or evidence presented by the grievant and will confirm that the grievant has been given a copy of the complete grievance file.

The Factfinder will conduct any inquiry necessary to develop facts on which to recommend a decision. The Factfinder shall sent the recommended decision to the Administrator and to the grievant.

- g. Final Decision - The final deciding official will be the Administrator except where the Administrator has had previous substantive involvement with any aspect of the grievance. In that case, the final decision must be made by a higher level officials.

In cases where the grievant requested a final decision without review by a Factfinder, the Final Deciding Official will review and analyze the case and issue a final decision to the grievant within 60 days of the grievant's request for a final decision.

In cases where the grievant requested review by a Factfinder prior to a final decision, the Final Deciding Official may:

- (1) Adopt the recommendation of the Factfinder as the final decision on the grievance and issue a final decision, in writing, to the grievant within 15 days of receipt of the Factfinder's recommendation;
  - (2) Grant more relief to the grievant than recommended by the Factfinder; and
  - (3) Appeal the Factfinder's recommendation to the Director, Office of Human Resources Management, USDA, when the recommendation can be shown to be contrary to law, rule, regulation, or published Agency policy; supported by less than substantial evidence; or setting a precedent of such wide and detrimental impact on the Agency that further review is warranted. Such an appeal must be made within 15 days of the Final Deciding Official's receipt of the Factfinder's recommendation. The Director, Office of Human Resources Management may entertain requests for extensions of the time limit for good cause shown, provided such requests are filed within the 15-day period.
- h. Director, Office of Human Resources Management, USDA - The Director will render the Department's final decision on the grievance referred for resolution. There are no provisions for further administrative review of a final grievance decision outside of the Department.
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### **RECONSIDERATION OF PMRS RATINGS**

Performance Management and Recognition System (PMRS) employees must be afforded the opportunity to seek reconsideration of PMRS ratings of record. Such employees who seek reconsideration of a performance rating assigned under the PMRS must use this reconsideration procedure to resolve any concerns. Failure to do so may result in rejection or cancellation of employees' reconsideration requests. All affected employees are advised that merit pay disbursements will not be delayed pending decisions on reconsideration requests.

- a. Presentation of the Grievance - The grievant must initiate the Reconsideration Process within 10 days of receipt of the performance rating at issue. The employee must inform (orally or in writing) the **official who reviewed** the supervisor's rating of the following:
  - (1) The rating is being requested to be reconsidered;
  - (2) Changes desired in the rating; and
  - (3) The basis for the employee's belief that the changes being sought are warranted. The grievant has the ultimate burden of supporting, through reference to the performance elements, standards, and work product(s), that the changes being requested are supported by facts and evidence.
- b. Decision - If the grievance request is timely, the Reviewing Official will consider the employee's request; the supervisor's explanation for the ratings assigned, the employee's performance elements, standards, and work products; and other documentation submitted by the grievant and/or supervisor, and will, within 15 days after the employee request, issue to the grievant a written decision informing him/her of:
  - (1) Any changes (or lack of changes) to the rating;
  - (2) The reason(s) for any change (or lack of change) in the rating;
  - (3) The right to have the matter reviewed further by a Factfinder and to receive a final decision from the Administrator.

If the reconsideration request is untimely, the Reviewing Official will reject the request and will inform the employee of this determination in writing. The employee will be notified of the right to have the rejection reviewed by the Chief, USDA Grievance and Appeals Staff, USDA. Such a request must be in writing and filed within 7 days of the employee's receipt of the decision.

- c. Request for Factfinding - To obtain a review by a Factfinder and a final decision by the Agency Administrator, the grievant must, within 10 days of receipt of the decision from the Reviewing Official, notify the Reviewing Official in writing of:
  - (1) His/her dissatisfaction with the decision and request a final decision by the Agency Administrator following factfinding;
  - (2) The specific reasons why the findings in the decision are considered to be incorrect; and

- (3) Any additional evidence which the employee wishes the Factfinder and Administrator to consider.

This information must be submitted to: Chief, Employee and Management Relations  
MRP, Human Resources  
4700 River Road, Unit 18  
Riverdale, MD

Employee and Management Relations, MRP, Human Resources, will forward the reconsideration filed to the Chief, USDA Grievance and Appeals Staff, USDA, for assignment to a Factfinder. A copy of the file also will be sent to the grievant. The reconsideration file will contain at a minimum:

- (1) The rating in question;
- (2) The performance elements and standards;
- (3) The employee's request for reconsideration;
- (4) The reconsideration official's written decision;
- (5) The employee's request for a final decision by the Administrator following factfindings; and
- (6) Work examples and other documentation submitted by the employee and the employee's supervisor to support their respective positions on the propriety of the ratings assigned.

The Factfinder will review the grievance and issue a recommended decision to the Administrator within 30 days from receipt of the case. The recommended decision will include a finding of facts, an analysis upon which the conclusions are based, and a specific statement recommending the granting or denying of the relief requested by the grievant. The Administrator will adopt the recommendation of the Factfinder unless it is clearly erroneous.

- d. Final Decision - The Administrator will notify the employee of the final decision within 7 days of receipt of the Factfinder's recommendation. A copy of the recommendation will be attached to the Administrator's final decision. In the event the Administrator determines that the recommendation is clearly erroneous, a full explanation of the basis for the determination will be given to the employee in the written decision. The Administrator will provide a copy of the final decision to the Chief, USDA Grievance and Appeals Staff, USDA, for post audit purposes.

The decision of the Agency Administrator is final and there are no provisions for further administrative review.

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